

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE COMMISSIONER OF VETERANS AFFAIRS

Steven M. Savageau,

Petitioner,

vs.

Saint Louis County,

Respondent.

**FINDINGS OF FACT,
CONCLUSIONS, AND
RECOMMENDATION**

Administrative Law Judge Bruce H. Johnson conducted a hearing in this contested case proceeding beginning at 10:00 a.m. on Monday, December 2, 2002, at the Office of Administrative Hearings, Suite 714, Government Services Center, 320 West 2nd Street, Duluth, Minnesota. The record of that hearing closed on December 9, when all of the parties' post-hearing submissions were due.

Steven M. Savageau, 5713 Juniata Street, Duluth, Minnesota 55804, was not represented by counsel and appeared at the hearing on his own behalf. Amy H. Kuronen, Assistant St. Louis County Attorney, Suite 501, 100 North 5th Avenue West, Duluth, Minnesota 55802-1298, appeared at the hearing as attorney for the Respondent, St. Louis County (the County).

NOTICE

This Report is only a recommendation to the Commissioner of Veterans Affairs and is not a final decision. The Commissioner will make his final decision after reviewing this report and the hearing record. In making that decision the Commissioner may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendation that appear in this report.

Under Minnesota Law,^{[\[1\]](#)} the Commissioner may not make his final decision until after the parties have had access to this Report for at least ten days. During that time the Commissioner must give any parties adversely affected by this Report an opportunity to file objections to the Report and to present argument supporting their

positions. Parties should contact the office of Jeffrey L. Olson, Commissioner, Minnesota Department of Veterans Affairs, Veterans Service Building, St. Paul, Minnesota 55155-2079, to find out how to file exceptions or present argument.

The record of this contested case proceeding closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes. If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision.^[2]

THE ISSUE

Whether or not a provision of the legislation establishing the County's civil service system^[3] **supersedes the Veterans Preference Act's notice, hearing, and cause requirements**^[4] **when the County discharges a veteran from a probationary position?**

Based on the evidence in the hearing record, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Mr. Savageau currently lives at 5713 Juniata Street, Duluth, Minnesota. He served on active duty in the United States Air Force from December 11, 1978, until September 30, 1994. His military service was honorable.^[5]

2. The County is a political subdivision of the state. When the matters at issue in this proceeding arose, the County owned and operated Nopeming Nursing Home, which was located within the County. Nopeming Nursing Home's employees were County employees. The personnel procedures and practices that governed Nopeming Nursing Home employees were established by the County's statutory civil service system^[6] and by personnel rules and procedures adopted by the County's Civil Service Commission and the County Board.^[7]

3. Sometime before June 2, 2000, the County employed Mr. Savageau in the probationary position of scheduling clerk for Nopeming Nursing Home's Nursing Department.^[8] Mr. Savageau remained a probationary employee throughout his county employment.^[9]

4. On June 2, 2000, Mr. Savageau's appointing authority informed the County's Civil Service and Personnel Department that Mr. Savageau's service during his probationary period had not been satisfactory and requested that his employment be terminated.^[10]

5. By letter dated June 2, 2000, the County's Civil Service and Personnel Department notified Mr. Savageau that his probationary employment was being

terminated as of that date because his “probation period has not been satisfactorily met.”^[11] And Mr. Savageau’s employment with the County ended on that date.

6. At no time before or after June 2, 2000, did the County notify Mr. Savageau of a right to have a hearing to establish incompetency or misconduct or of any other right under the Veteran’s Preference Act.^[12]

7. These Findings are based on all of the evidence in the record. Citations to portions of the record are not intended to be exclusive references.

8. The Memorandum that follows explains the reasons for these Findings, and, to that extent, the Administrative Law Judge incorporates that Memorandum into these Findings.

9. The Administrative Law Judge adopts as Findings any Conclusions that are more appropriately described as Findings.

Based upon these Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. Minnesota law^[13] gives the Administrative Law Judge and the Commissioner authority to consider the issues raised in this contested case proceeding and to make findings, conclusions, recommendations, and orders regarding those issues, as appropriate.

2. The Department of Veterans Affairs gave the parties proper and timely notice of the hearing, and it has also complied with all legal requirements for initiating and proceeding with this administrative contested case.

3. Mr. Savageau is an honorably discharged “veteran” within the meaning of the Veterans Preference Act,^[14] and he is entitled to any protections and benefits of that Act that may apply to him.

4. The County is a political subdivision of the state within the meaning of the Veterans Preference Act^[15] and its personnel practices are therefore subject to the provisions of that Act, except as may otherwise be provided by law.

5. In most cases, the Veterans Preference Act^[16] requires a public employer to give a veteran notice of the right to a hearing to establish cause prior to any action to discharge the veteran from his or her position. However, the legislature has specifically eliminated that notice, hearing, and cause requirement for St. Louis County when the County acts to discharge a veteran who is a probationary employee.^[17]

6. Since Mr. Savageau was a probationary employee when the County discharged him, the County did not violate his rights under the Veterans Preference Act

by failing to give him notice of a right to a hearing to establish cause for his removal from that position.

7. The Administrative Law Judge adopts as Conclusions any Findings that are more appropriately described as Conclusions.

8. The Memorandum that follows explains the reasons for these Conclusions, and the Administrative Law Judge therefore incorporates that Memorandum into these Conclusions.

Based upon these Conclusions, and for the reasons explained in the accompanying Memorandum, the Administrative Law Judge makes the following:

RECOMMENDATIONS

The Administrative Law Judge recommends that the Commissioner DISMISS Steven M. Savageau's Petition for Relief.

Dated this 10th day of December 2002.

S/ Bruce H. Johnson

BRUCE H. JOHNSON
Administrative Law Judge

Reported: Tape Recorded (one tape); No Transcript Prepared.

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NOTICE

Under Minnesota law,^[18] the Commissioner of Veterans Affairs is required to serve his final decision upon each party and the Administrative Law Judge by first class mail.

MEMORANDUM

The underlying facts are not in dispute. Mr. Savageau is an honorably discharged veteran. St. Louis County hired him as a scheduling clerk in the Nursing Department of the County's Nopeming Nursing Home. When hired, Mr. Savageau was hired as a probationary employee who was required to satisfactorily complete a period of probation before gaining the status of a permanent employee in the County's classified service. On June 2, 2002, before Mr. Savageau had completed his period of probationary service, the County discharged him for unsatisfactory performance during that probationary period. The County did not then or thereafter notify Mr. Savageau of any right under the Veterans Preference Act to a hearing to establish that his removal from his position was because of incompetency or misconduct on his part.

Mr. Savageau argues that even though he was only a probationary employee, the County violated the Veterans Preference Act by failing to notify him of a right to a hearing on whether there was cause to discharge him. He seeks an award of back pay from the date of his dismissal until the time when he receives such a hearing.^[19] For its part, the County argues that the legislation that established the County's civil service system specifically exempts it from the Veterans Preference Act's notice, hearing, and cause requirements whenever the County acts to discharge a probationary employee.

The Veterans Preference Act provides that^[20]

[n]o person holding a position by appointment or employment in the several counties, cities, towns, school districts and all other political subdivisions in the state, who is a veteran separated from the military service under honorable conditions, *shall be removed from such position or employment except for incompetency or misconduct shown after a hearing*, upon due notice, upon stated charges, in writing. [Emphasis supplied.]

Any veteran who has been notified of the intent to discharge the veteran from an appointed position or employment pursuant to this section shall be notified in writing of such intent to discharge and of the veteran's right to request a hearing within 60 days of receipt of the notice of intent to discharge.

Even though language of the Act does not appear to provide for any exceptions, the Minnesota Supreme Court and Court of Appeals have ruled on several occasions that there are some situations where the legislature did not intend the Act's notice, hearing, and cause to apply. For example, the requirement of providing a veteran with a hearing to establish incompetency or misconduct before discharging him does not apply when a public employer eliminates a veteran's position in good faith for some legitimate purpose, such as when it is part of a good faith reduction in force.^[21] Another exception is when a public employer eliminates the veteran's position in good faith for

some legitimate reason and demotes him or her to a lower paying position instead of completely ending employment.^[22]

Mr. Savageau correctly points out that veterans who are probationary employees are in most cases entitled to the Act's procedural protections.^[23] However, when the legislature enacted the legislation creating *St. Louis County's* civil service system, it included the following provision in that legislation:

The civil service director as executive head of the county civil service commission shall . . .

(i) Establish the length of the probation or working test period which shall not be less than six months and not more than 12 months, during which time discharges may be effected *without specifying cause or granting a hearing*, to enable the appointing authority to determine whether new officers and employees are able and willing to perform their duties satisfactorily; and for the method of removal or transfer of such officers and employees whose work or conduct during such period is unsatisfactory. [Emphasis supplied.]^[24]

In other words, sections 197.46 and 383C.034 of Minnesota Statutes appear to be in direct conflict. So the question presented here is: which of those two statutes takes precedence over the other? Mr. Savageau argues that the Veterans Preference Act prevails over the act creating the County's civil service system. The County argues the opposite.

As it turns out, the Minnesota Court of Appeals directly addressed the same question in *Schoen v. County of St. Louis*.^[25] And the Court ruled that the legislature intended the act that created the County's civil service system to modify the Veterans Preference Act with regard to the rights of probationary employees of that particular county when they were discharged from employment. Although the County included a copy of that case in the hearing record as Exhibit 3, a brief explanation of the Court of Appeals' reasoning might be helpful. First, the Court noted that the legislature passed the present form of the Veterans Preference Act in 1931.^[26] The 1931 version of the Veterans Preference Act provided that no subsequent legislation was to be interpreted as inconsistent with the Veterans Preference Act unless the later legislation specifically provided that provisions of the Veterans Preference Act would be "superseded, modified, amended, or repealed."^[27] The legislature passed the act establishing the County's civil service system ten years later in 1941. That act provided that:

All acts and parts of acts inconsistent with sections 383C.03 to 383C.059 are hereby repealed to the extent necessary to give effect to the provisions of sections 383C.03 to 383C.059, *any provision of Laws 1931, chapter 347 to the contrary notwithstanding*.^[28] [Emphasis supplied.]

In other words, when enacting the statute creating the County's civil service system, the legislature specifically stated that its provisions prevailed over any contrary provision of

the Veterans Preference Act. It was because of this that the Minnesota Court of Appeals concluded “that the legislature was aware of the conflict with the veterans preference law and chose to supersede the hearing requirement when an employee was discharged from a probationary position.”^[29]

The ALJ is obliged to apply the law in this case as it has been decided by the Minnesota Court of Appeals. The ALJ therefore concludes that the County did not violate Mr. Savageau’s veterans preference rights by failing to give him notice of a right to a hearing when the County discharged him from his probationary position.^[30]

B. H. J.

^[1] Minnesota Statutes, section 14.61. (Unless otherwise specified, all references to Minnesota Statutes are to the 2000 edition.)

^[2] See Minnesota Statutes, section 14.62, subdivision 2a.

^[3] Specifically Minnesota Statutes, section 383C.034.

^[4] Minnesota Statutes, section 197.46.

^[5] DD214 attached to the Notice of Hearing.

^[6] See Minnesota Statutes, sections 383C.03 through 383.059.

^[7] See Minnesota Statutes, sections 383C.034(c).

^[8] Testimony of Everett Niska and Steven Savageau.

^[9] *Id.*; see also Exhibit 1.

^[10] Testimony of Everett Niska.

^[11] *Id.*; Exhibit 1.

^[12] Testimony of Everett Niska and Steven Savageau.

^[13] Minnesota Statutes, section 14.50 and section 197.481.

^[14] Minnesota Statutes, section 197.447.

^[15] Minnesota Statutes, section 197.46.

^[16] *Id.*

^[17] Minnesota Statutes, section 383C.034; *Schoen v. County of St. Louis*, 418 N.W.2d 112 (Minn.App. 1989).

^[18] Minnesota Statutes, section 14.62, subdivision 1.

^[19] The parties agree that the County has subsequently closed Nopeming Nursing Home, which had been Mr. Savageau’s place of work, so that reinstatement to his former position is not possible.

^[20] Minnesota Statutes, section 197.46.

^[21] *State, ex rel. Boyd v. Matson*, 155 Minn. 137, 193 N.W. 30 (Minn. 1923).

^[22] *Leininger v. City of Bloomington*, 299 N.W.2d 723 (Minn. 1980).

^[23] *Wayne D. Utke vs. City of Huston*, OAH Docket No. DVA-85-012-GB (July 23, 1985); see also *Walters v. Ramsey County*, 410 N.W.2d 343 (Minn.App. 1987), *review denied*, (Minn. Sep. 30, 1987).

^[24] Minnesota Statutes, section 383C.034.

^[25] 448 N.W.2d 112 (Minn.App. 1989).

^[26] 1931 Minn.Laws ch. 347, §1.

^[27] 1931 Minn.Laws ch. 347, §2. See the Court of Appeals discussion in *Schoen v. County of St. Louis*, 418 N.W.2d at 114.

^[28] The emphasized provision is a specific reference to the Veterans Preference Act, as the legislature enacted it in 1931.

^[29] *Schoen v. County of St. Louis*, 418 N.W.2d at 115.

^[30] Mr. Savageau also suggested that there may have been some irregularities in the process that the County followed in discharging him from his probationary position. But that is a different issue than whether or not the County violated any of his veterans preference rights. And it is not an issue that the Commissioner of Veterans Affairs can consider and rule on. He would have to seek recourse for something like that in accordance with the laws and rules that govern the County's civil service system.